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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TUMBLR, INC.,

Plaintiff,

v.

ARMAND VEGA,

Defendant.

Civ. Action No. _____

COMPLAINT

Plaintiff, Tumblr, Inc., by and through undersigned counsel, for its complaint, alleges as follows:

NATURE OF THE ACTION

1. This action arises from Defendant's intentional, malicious and fraudulent use and registration of various domain names, including domain names incorporating Plaintiff Tumblr,

Inc.'s TUMBLR trademark to advertise and offer "follow train" services which encourage Tumblr users to follow lists of other users to gain more followers for themselves in violation of Tumblr's Application Developer and API License Agreement, Terms of Service, Community Guidelines, Privacy Policy and Trademark Guidelines. Upon information and belief, Defendant engaged in the unauthorized access of Tumblr's computers and servers to cause Tumblr users to artificially and instantly follow other Tumblr users' blogs without the users' consent, direction or knowledge and cause the automatic upload of commercial advertisements containing misleading and false content promoting Defendant's commercial business to Tumblr users' blogs without the users' consent, direction or knowledge.

2. Defendant's actions give rise to several federal and state causes of action, including violation of the federal Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act of 2003, 15 U.S.C. § 7701; federal unfair competition, false description and false designation of origin, and cybersquatting under Section 43(a) of the Trademark Act of 1946 (the "Lanham Act"), 15 U.S.C. §§ 1125(a), 1125(d); breach of contract under the common law of the State of New York; tortious interference with contractual relations under the common law of the State of New York; and unfair and deceptive trade practices under New York Law, N.Y. Gen. Bus. L. § 349.

3. Tumblr seeks permanent injunctive relief, an accounting of Defendant's profits, an award of actual and/or statutory damages, an award of punitive damages, an order transferring Defendant's domain names incorporating the TUMBLR mark to Tumblr, Inc. and an award of attorneys' fees and costs.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the federal causes of action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a), and 1367, and under principles of pendent jurisdiction.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district and because Defendant agreed to comply with Tumblr's Application Developer and API License Agreement (the "API Agreement") which provides that "any dispute arising from or relating to the subject matter of [the API] Agreement shall be governed by the exclusive jurisdiction and venue of the state and federal courts of New York County, New York."

6. In addition, Tumblr's API Agreement, incorporating Tumblr's Terms of Service, by reference, provides that courts located within New York County, New York, shall have personal jurisdiction over any and all disputes between Tumblr and the Defendant.

PARTIES

7. Tumblr, Inc. ("Tumblr" or "Plaintiff") is a corporation organized and existing under the laws of Delaware, with a principal place of business at 35 E. 21st St., 10th Floor, New York, New York 10010.

8. Upon information and belief, Armand Stefan Vega ("Defendant") is an individual, also known as, Armand Escobar, currently residing at 840 Beacon St. NW, Palm Bay, Florida 32907.

FACTUAL BACKGROUND

A. Tumblr's Services

1. Founded in 2007 by David Karp, Tumblr, Inc., owns and operates the well-known global microblogging and social sharing website <tumblr.com>. Through the Tumblr website

and its services users are able to create personal short-form blogs by posting multimedia content, including, text, photos, quotes, links, music, and videos. Tumblr's mission is to promote self-expression and individuality.

2. Tumblr's website, and Tumblr's application programming interface ("API"), its accompanying or related documentation, source code, executable applications and other materials (collectively, the "Tumblr Platform") enable users to "follow" other Tumblr users' blogs, post messages, comments and articles to other Tumblr users' blogs, and/or re-blog content posted by other Tumblr users.

3. To access its computer network and social blogging website, Tumblr requires each user to register with a unique email address and password and requires compliance with Tumblr's Terms of Service and Community Guidelines, which incorporate by reference Tumblr's Privacy Policy and Trademark Guidelines (Tumblr's Terms of Service, Community Guidelines, Privacy Policy and Trademark Guidelines are collectively referred to as the "Tumblr Policies"). True and correct copies of the Tumblr Policies are attached hereto as **Exhibit A**.

4. Only registered users may create and edit Tumblr blogs and interact with other Tumblr blogs. Tumblr implements various other security measures to protect its computers and servers and devotes significant resources to combat unauthorized use of its website and services.

5. Due to the extensive and widespread use of Tumblr's website and services, the Tumblr Platform is utilized as a means to advertise and promote users' individual blogs and their respective brands. To this end, the number of Tumblr users that "follow" a blog correlates to a blog's popularity and relevance. As a result, "followers" are highly sought after and valued by Tumblr users seeking to increase their visibility.

6. In addition to providing services to its users, Tumblr grants third party software developers interested in integrating applications with Tumblr's website a limited license to access Tumblr's website and the Tumblr Platform. The limited license is conditioned on compliance with Tumblr's API Agreement and, by incorporation, the Tumblr Policies. The API Agreement and the Tumblr Policies set forth standards and guidelines for accessing and using Tumblr's website and services and are intended to preserve the integrity of the Tumblr website and services. A true and correct copy of the API Agreement is attached hereto as **Exhibit B**.

B. Tumblr's Trademark Rights

7. Since 2007, Tumblr has continuously and exclusively used the TUMBLR trademark in connection with its computer software and internet-based social networking services. Indeed, the Tumblr website has been one of the fastest growing social networking websites in the United States. For example, from July 2010 to July 2011, the Tumblr website saw a 218% increase in visitors from 4.2 million visitors to 13.4 million visitors. By the end of 2011, the Tumblr website had 15.9 million U.S. visitors. By December 2012, Tumblr held the second largest share of the social networking market, accounting for 5.7% of total time spent on social networking sites. To date, Tumblr hosts over 221 million blogs containing more than 102 billion posts in 13 different languages, including Dutch, English, French, German, Italian, Japanese, Korean, Polish, Portuguese (Brazil), Portuguese (Portugal), Russian, Spanish and Turkish.

8. In addition to Plaintiff's well established common law rights, Plaintiff is the exclusive owner of the entire right, title and interest in and to numerous trademark and service mark registrations for the TUMBLR Mark in the United States, including but not limited to:

a. United States Trademark Registration No. 3,714,214, first used February 19, 2007, filed October 27, 2008, issued November 24, 2009, covering electronic publishing services and Internet based social networking services in International Classes 41 and 45.

b. United States Trademark Registration No. 4,319,728, first used April 27, 2007, filed February 13, 2012, issued April 16, 2013, covering computer software, advertising and marketing services, computer services and on-line non-downloadable software in International Classes 9, 35, 38 and 42.

c. United States Trademark Registration No. 4,341,002, first used September 15, 2009, filed March 31, 2012, issued May 28, 2013, covering computer software, advertising and marketing services, computer services, electronic publishing services, on-line non-downloadable software, and internet-based social networking services in International Classes 9, 35, 38, 41, 42 and 45.

d. United States Trademark Registration No. 4,341,003, first used May 27, 2008, filed March 31, 2012, issued May 28, 2013, covering computer software, advertising and marketing services, computer services, electronic publishing services, on-line non-downloadable software and internet-based social networking services in International Classes 9, 35, 38, 41, 42 and 45. Representative printouts of the aforementioned registrations, all of which are valid, subsisting, and in full force and effect, from the United States Patent and Trademark Office's online database are attached hereto as **Exhibit C**.

9. Tumblr owns and maintains numerous domain names that incorporate the TUMBLR mark, including but not limited to <tumblr.com>, <tumblr.ae>, <tumblr.co>, <tumblr.de>, <tumblr.fr>, <tumblr.gr>, and <tumblr.org>.

10. As a result of Tumblr's widespread use and registration of the TUMBLR trademark worldwide, and the high degree of consumer recognition of the TUMBLR trademark and Tumblr services, Tumblr has developed invaluable good will and trademark rights in the TUMBLR trademark.

C. The Tumblr Policies and API Agreement

11. In order to become a registered Tumblr user and edit Tumblr blogs or interact with other Tumblr blogs, and utilize certain Tumblr services, a user must agree to comply with the Tumblr Policies.

12. Additionally, developers interested in integrating their applications with the Tumblr website and services must comply with Tumblr's API Agreement which grants a limited license to access Tumblr's website and the Tumblr Platform. The API Agreement incorporates by reference the Tumblr Policies.

13. Tumblr's API Agreement and the Tumblr Policies create enforceable contracts between Tumblr and its users.

14. Paragraph 3 of the API Agreement includes express restrictions for developers, including but not limited to the following:

a) "No Modification of Tumblr Dashboards or Content Streams. You shall not remove or insert Content when displaying a user's Tumblr Dashboard or other streams of Content, including but not limited to (i) removing or inserting any advertisements or other sponsored material or (ii) removing other Content inserted by Tumblr. You shall further not reorder Content in a user's Tumblr Dashboard and shall present that Content in the order provided by the Tumblr API or Tumblr Firehose. In addition, your advertisements or sponsored

material cannot replicate the look and feel of, or reasonably be confused by users as, a piece of Content and should be clearly separated from Content.” See **Exhibit B**;

b) “No In-Network Promotions. Licensee Applications may not promote any Content to or within the Tumblr network (“In-Network Promotions”), including if payment is received for such In-Network Promotions. For example, Licensee Applications may not create ranking systems or directories for Tumblr blogs or posts and promote those rankings or directories within or outside of the Tumblr Services.” See *id*;

c) “No Compromising Tumblr Security. You aren't permitted to use the Licensed Materials in any manner that does or could potentially undermine the security of the Tumblr Services or the Licensed Materials. In addition, you won't, and won't attempt to, (i) interfere with, modify or disable any features, functionality or security controls of the Tumblr Services, Tumblr API, or Tumblr Firehose, (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Licensed Materials, or (iii) reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Tumblr Services, Tumblr API, or Tumblr Firehose.” See *id*;

d) “Reporting Security Flaws and Unauthorized Access. You will immediately report to Tumblr any security flaws you discover in any of the Tumblr Services or the Licensed Materials. Tumblr reserves the right, in its sole discretion, to determine what constitutes a security flaw. You will also immediately report any actual or suspected unauthorized access to the Tumblr API or Tumblr Firehose using your credentials. Failure to report such flaws or unauthorized accesses, particularly prior to public disclosure, shall be considered a material breach of this Agreement.” See *id*;

e) “No Phishing, Malware, or Identity Theft. You will not publish or link to malicious content intended to damage, disrupt, compromise, or exploit a user’s browser, computer, mobile (or other) device, or Tumblr account or to compromise a user’s privacy in any manner. In addition, you won’t collect, or try to collect, a user’s Tumblr credentials, including but not limited to usernames or passwords.” *See id*;

f) “No Spamming. You won’t use the Tumblr Services, Tumblr API, or Tumblr Firehose, and won’t create Licensee Applications, for the purpose of ‘spamming’” [defined as including, but not limited to, “posting numerous substantially identical pieces of Content, posting misleading or obfuscated links, and executing a large number of native Tumblr actions (e.g., posting, reblogging, liking, following) in an unnaturally short period of time”]. *See id*;

g) “Respect for Limitations. You will respect the letter and the spirit of the programmatic limitations of the Tumblr API and Tumblr Firehose and the restrictions of this Agreement in designing and implementing Licensee Applications. For example, you won’t work around any explicit Tumblr API or Tumblr Firehose limitation, even if such is possible by avoiding use of the Tumblr API or Tumblr Firehose. Specific prohibited actions include ‘page scraping’, which is the process of downloading and parsing whole Tumblr pages in order to build Licensee Applications with capabilities beyond those provided by the Tumblr API or Tumblr Firehose.” *See id*;

h) “No Content Modifications. Unless you are legally permitted to do so, you won’t use the Licensed Materials to make any modifications to any Content, other than to modify the formatting of such Content in order to display it in a manner appropriate for the pertinent Licensee Applications.” *See id*;

i) “No Circumvention or Reverse Engineering; Maintenance of Proprietary Notices. You won't, and won't attempt to: (i) interfere with, modify or disable any features or functionality of the Tumblr Services, Tumblr API, or Tumblr Firehose including, without limitation, any mechanisms used to restrict or control the Tumblr Services, Tumblr API, or Tumblr Firehose such as anti-circumvention measures; (ii) translate, reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Tumblr Services or the Licensed Materials; (iii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Tumblr Services or the Licensed Materials; or (iv) remove or modify any proprietary notices, attribution or marks from or delivered as part of the Tumblr Services or the Licensed Materials.” *see id*;

j) “Genuine Actions. You won't create Licensee Applications with capabilities that do not reflect explicit, genuine expressions of user intent and permission. For example, Licensee Applications should not automatically follow blogs, should not like, reblog, or reply to Content without explicit user direction to do so, and should not post to the Tumblr Services on a user's behalf without (i) a specific interaction informing a user that such user is making a post, and notifying the user where that post will go, and (ii) an explicit action by such user evincing permission for making the post (e.g., a Licensee Application should not automatically generate a post indicating that a user has signed up for it). In addition, a Licensee Application should not require a user to generate a post as a prerequisite to using the application or a feature of the application.” *See id*;

k) “Use of Tumblr Marks. You won't, under any circumstances: (i) include in or use the Tumblr Marks, or any marks that are confusingly similar to or derivative of the Tumblr Marks (including without limitation, ‘TUMBL’, ‘TUMBLOG’, ‘TUM’ and ‘BLR’)

(‘Confusing Marks’), as part of your trade name (registered or otherwise), logos, or other identifiers; (ii) include in or use the Tumblr Marks or any Confusing Marks as part of any names, domain names, logos, or other identifiers of Licensee Applications; or (iii) use the Tumblr Marks or Confusing Marks in a manner that creates or may create a sense of endorsement, sponsorship, or association with Tumblr, unless expressly permitted by Tumblr, in writing, to do so.” *See id*;

l) “No Misleading Users. You may not, under any circumstances, whether within a Licensee Application or in materials discussing or concerning a Licensee Application, mislead, confuse or cause misapprehension or confusion among users as to the features, functionality, origin, capabilities, or other aspects of that Licensee Application, Tumblr, the Tumblr Services, or the Licensed Materials.” *See id*.

15. The Tumblr Policies include express restrictions, including but not limited to prohibiting the following:

a) “You may not, without express prior written permission, do any of the following while accessing or using the Services: (a) tamper with, or use non-public areas of the Services, or the computer or delivery systems of Tumblr and/or its service providers; (b) probe, scan, or test any system or network (particularly for vulnerabilities), or otherwise attempt to breach or circumvent any security or authentication measures; (c) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Tumblr (and only pursuant to those terms and conditions) or unless permitted by Tumblr's robots.txt file or other robot exclusion mechanisms; (d) scrape the Services, and particularly scrape Content (as defined below) from the Services; (e) use the Services to send altered, deceptive, or false source-identifying information, including without limitation by forging TCP-IP packet headers or email headers; or (f) interfere

with, or disrupt, (or attempt to do so), the access of any Subscriber, host or network, including, without limitation, by sending a virus to, spamming, or overloading the Services, or by scripted use of the Services in such a manner as to interfere with or create an undue burden on the Services.” *See* **Exhibit A**;

b) “Disruptions, Exploits, or Resource Abuse... [d]on't attempt unauthorized use, disruption, or exploitation of Tumblr.com or our other products and services, or otherwise abuse Tumblr's resources.” *See id*;

c) “Non-Genuine Social Gesture Schemes. Don't participate in schemes to drive up non-genuine Follows, Likes, Reblogs, etc. Don't orchestrate or engage in ‘follow trains’, where users are encouraged to follow lists of other users to gain more followers for themselves.” *See id*;

d) “Don’t spam people... [d]on't use deceptive means to generate revenue or traffic, or create blogs with the primary purpose of affiliate marketing. Spam doesn't belong on Tumblr.” *See id*;

e) “Don’t incorporate the Tumblr Marks, or anything confusingly similar, into domain names, screen names, website names, trademarks, trade names, company names, DBAs, etc. and don’t use the Tumblr Marks as part of the name for a product or service not offered by Tumblr, unless we have given express permission.” *See id*;

f) “Don’t modify or alter the Tumblr Marks, like by adding to, changing or abbreviating the Tumblr Marks to create new words (for example, ‘Tumblr-ized’).” *See id*; and

g) “Don’t use the Tumblr Marks in a way that suggests incorrectly that Tumblr is affiliated with, sponsors or endorses you, your websites, your products or your services.” *See id*.

D. Defendant's Infringing Acts

16. Upon information and belief, Defendant is the owner and operator of multiple “follow train” websites and applications and has registered several domain names to offer its services, including but not limited to: <tumblrpromos.com>, <getmoretumblrfollowers.com>, <tumblrfollowers.com>, <infinitefollowers.com>, <infinitefollowers.net>, <infinitefollowers.org>, <getmoretumblrfollowers.info>, and <followerblasting.info>. The <infinitefollowers.net>, <infinitefollowers.org>, <getmoretumblrfollowers.info>, and <followerblasting.info> redirect users to the <infinitefollowers.com> website, (hereinafter referred to as the “Infringing Website”).

17. On Defendant's Infringing Website, Defendant directly encourages Tumblr users to generate non-genuine traffic through fraudulent and deceptive means, including awarding points to Tumblr users as follows:

“Earn 5 points for each featured user that you follow
Earn 50 points for each person that you refer to the site. You can refer users by posting your referral link.
Earn 2 points for each user that you follow
Earn 4 points for reblogging other users' posts.”

18. Additionally, Defendant offers to feature a Tumblr user's blog “at the top of the user list” for additional fees, the payment of which can be made through Defendant's Infringing Website. Indeed, Defendant advertises its “Become Featured” services on the Infringing Website, stating,

“Have your blog featured at the top of the user list! Having your blog featured means more users will see your blog before they see other users. Since your blog will be listed higher up on the user list, this means you will gain more followers than regular users of our site. When our app is up, everyone that links their account automatically follows you! You will be added to the featured list instantly after payment!”

19. Defendant's Infringing Website induces Tumblr users to download an application which is integrated with the Tumblr website and the Tumblr Platform (hereinafter, the "Infringing Application") in order to artificially and instantaneously increase a Tumblr user's followers.

20. Upon information and belief, Defendant or individuals acting in concert with Defendant, agreed to Tumblr's API Agreement in order to access proprietary information on the Tumblr website for the purpose of developing Defendant's Infringing Application. During all relevant times Defendant agreed to abide by the API Agreement.

21. Upon information and belief, since as early as January 22, 2013 to the present, Defendant's Infringing Application has enabled Defendant to gain access to Tumblr users' accounts to artificially and instantly cause Tumblr users to automatically "follow" over fifty other Tumblr accounts without the user's consent, direction, or knowledge and to initiate and transmit unsolicited commercial electronic mail messages to the Tumblr user's blog without the user's consent, direction, or knowledge.

22. Defendant's unsolicited commercial electronic mail messages do not properly identify Defendant as the initiator of the messages, nor do they provide clear or conspicuous notice that the messages are advertisements generated by Defendant, information on how recipients can opt-out of future posts, or a valid address that Tumblr users can use to contact Defendant.

23. Upon information and belief, Defendant's unsolicited commercial electronic mail messages are intentionally misleading and intended to redirect users to Defendant's Infringing Website, where Defendant induces users to download Defendant's Infringing Application. For

example, Defendant transmitted the misleading commercial electronic mail message shown below.

im tired of tumblrplug

this site is 10000000 times better. I got 789 followers from it today (:

#promo #f4f #follow for follow #follow 4 follow #follow back #follow me #followers
 #promo 4 promo #promo for promo #promotion #promotions #promos #p4p #promote your blog
 #promote your tumblr #get more followers #follow #plug #increase followers #more followers #p4f
 #tumblr train #fff #i follow back #promo game #f4p #soo promo #submission #instant follow

The message includes a link to Defendant's website and, based on information and belief, the message was transmitted without the user's consent, direction, or knowledge and falsely represented that the Tumblr user gained 789 followers.

24. Defendant's Infringing Website includes information that suggests Tumblr users may unlink their accounts from Defendant's services; however, the link provided redirects users to the <infinitefollowers.com> home page and does not provide a manner to opt out of future commercial electronic mail messages from the Defendant.

25. Upon information and belief, Defendant or individuals acting in concert with Defendant, registered for Tumblr's services and during all relevant times agreed to abide by the Tumblr Policies.

26. Upon information and belief, Defendant has engaged, and continues to engage, in advertising activities on the Tumblr website and elsewhere.

27. Tumblr has not authorized Defendant to conduct any commercial activity on Tumblr's website that exceeds the authorized commercial activity provided in the Tumblr Policies.

28. Tumblr has not authorized Defendant to use other users' accounts to access Tumblr's computers and services and has implemented technical measures to block Defendant's access to the Tumblr website.

29. Upon information and belief, Defendant does not disclose to Tumblr users that its services are unlawful and violate the Tumblr Policies. Defendant knowingly, intentionally, willfully, maliciously and fraudulently induces, encourages and assists Tumblr users in abusing Tumblr's services and violating the Tumblr Policies.

30. In a deliberate effort to trade on Plaintiff's goodwill and the overwhelming success of Plaintiff's services, Defendant registered the <tumblrfollowers.com> <tumblrpromos.com>, <getmoretumblrfollowers.com> and <getmoretumblrfollowers.info> domain names, which include the entirety of Plaintiff's TUMBLR trademark. Moreover, Defendant uses the TUMBLR trademark in the source code of its <infinitefollowers.com> website and in the content of the website.

31. Tumblr previously contacted Defendant on January 22, 2013, demanding that Defendant cease the infringing conduct through the websites <getmoretumblrfollowers.com> and <tumblrpromos.com>. In response to Tumblr's prior communication, Defendant disabled these infringing sites on January 25, 2013. However, on January 24, 2013, one day before disabling the infringing sites, Defendant registered the <infinitefollowers.com> domain name to operate a substantively identical infringing service. The resolving IP address for <infinitefollowers.com>, 199.59.160.224, is directly linked to Defendant and its former infringing sites.

32. By Defendant's own admission, the Infringing Websites allow users to participate in follow trains in a disingenuous manner that clearly violate the Tumblr Policies.

33. Defendant's ongoing conduct has directly and proximately harmed Tumblr by, among other things, causing Tumblr to expend significant employee time and resources combatting Defendant's transmission of spam messages and responding to user complaints, by deleteriously impacting the Tumblr user experience and thereby deterring users from interacting with Tumblr, and by damaging Tumblr's goodwill and reputation with its users.

**FIRST CLAIM FOR RELIEF FOR FEDERAL UNFAIR COMPETITION, FALSE
DESCRIPTION AND FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))**

34. Tumblr repeats and re-alleges each and every allegation set forth in paragraphs 1 through 33 above, and incorporates them herein by reference.

35. Defendant's unauthorized use in commerce of the TUMBLR trademark in connection with Defendant's follow train services is causing and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant is affiliated, connected, or associated with Tumblr and that Defendant's goods, services and commercial activities originate from, are sponsored by, or are approved by Tumblr in violation of 15 U.S.C. § 1125(a).

36. Defendant registered and used the <tumblrfollowers.com>, <tumblrpromos.com>, <getmoretumblrfollowers.com> and <getmoretumblrfollowers.info> domain names, which incorporate the entirety of the TUMBLR mark. Registration of domain names incorporating Tumblr's well-known TUMBLR mark are likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant is affiliated, connected, or associated with Tumblr and that Defendant's goods, services, and commercial activities originate from, are sponsored by, or are approved by Tumblr, all in violation of 15 U.S.C. § 1125(a).

37. The aforesaid conduct of Defendant is causing irreparable injury to Plaintiff and its goodwill and reputation, and will continue both to damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

**SECOND CLAIM FOR RELIEF FOR VIOLATION OF
THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT
(15 U.S.C. § 1125(d))**

38. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 37 above, and incorporates them herein by reference.

39. Defendant has registered and used domain names that are confusingly similar to Plaintiff's registered and distinctive TUMBLR mark, including <tumblrfollowers.com>, <tumblrpromos.com> <getmoretumblrfollowers.com> and <getmoretumblrfollowers.info>.

40. Upon information and belief, Defendant registered and used such domain names with the bad faith intent of profiting unlawfully from Plaintiff's registered TUMBLR mark. Specifically, through Defendant's use of these domain names, Defendant intended to and did divert consumers to Defendant's unauthorized services and websites. Defendant intended to and did create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of its website.

41. Defendant's intentional, willful, and bad faith registration of multiple domain names incorporating Plaintiff's TUMBLR mark constitutes acts of cybersquatting in violation of 15 U.S.C. § 1125(d).

42. The aforesaid conduct of Defendant is causing irreparable injury to Plaintiff and its goodwill and reputation, and will continue both to damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF FOR VIOLATION OF CAN-SPAM
15 U.S.C. § 7701

43. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 42 above, and incorporates them herein by reference.

44. Tumblr is a provider of Internet access service as defined in 15 U.S.C. § 7702(11) because it provides a platform that enables users to display content and information over the Internet and may also include access to proprietary content, information and other services as part of a package to consumers.

45. Plaintiff's website, computers and servers operate in interstate and foreign commerce and communication and are therefore protected computers under 15 U.S.C. § 7702(13).

46. Defendant "initiates" the commercial electronic mail messages because Defendant originates or transmits such message under 15 U.S.C. § 7702(9).

47. The electronic mail messages initiated by Defendant are "commercial" electronic messages because their primary purpose is the commercial advertisement or promotion of a commercial product or service offered by Defendant (including content on an Internet website operated for a commercial purpose) as provided in 15 U.S.C. § 7702(2)(A).

48. The messages initiated by Defendant are "electronic mail messages" because they are messages that are sent to a destination consisting of a unique user name and a reference to an Internet domain, namely the Tumblr user's blog, as provided under 15 U.S.C. §§ 7702(5) and 7702(6).

49. The commercial electronic mail messages initiated by Defendant contain header information that is materially false or misleading because it fails to identify accurately a protected computer used to initiate the message because Defendant knowingly used Tumblr's

protected computer to relay the message for purposes of disguising its origin under 15 U.S.C. § 7704(a)(1)(C) and because Defendant's concealment of header information was done in a manner that would impair the ability of Tumblr to identify, locate, or respond to Defendant under 15 U.S.C. § 7704(a)(6).

50. Upon information and belief, Defendant initiated the transmission of the misleading commercial electronic messages with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that the messages' subject heading would be likely to mislead a recipient, acting reasonably under the circumstances in violation of 15 U.S.C. § 7704(a)(2).

51. Defendant initiated the transmission of commercial electronic messages, in a pattern or practice, through Tumblr's computers and servers to Tumblr users, that did not contain a functioning Internet-based opt-out mechanism in violation of 15 U.S.C. § 7704(a)(3)(A)(i).

52. Defendant initiated the transmission of commercial electronic messages, in a pattern or practice, through Tumblr's computers to Tumblr users, that did not contain clear and conspicuous identification that the messages were advertisements or solicitations, clear and conspicuous notice of the opportunity to decline to receive further commercial emails from the sender, and a valid physical postal address of the sender in violation of 15 U.S.C. § 7704(a)(5).

53. Upon information and belief, Defendant initiated the transmission of commercial electronic messages, in a pattern or practice, through Tumblr's computers to Tumblr users, that are misleading and unlawful under 15 U.S.C. § 7704(a), as alleged above, or assisted in the origination of such messages through the unauthorized relay or retransmission of the messages as defined in 15 U.S.C. § 7704(b)(3).

54. Defendant has caused Tumblr harm by causing Tumblr to expend significant employee time and sums of money combating Defendant's spam and responding to user complaints, by deterring users and potential users from using Tumblr, by damaging Tumblr's goodwill and reputation with its users, and by causing other injuries to Tumblr.

55. Tumblr is entitled to an injunction prohibiting further violations of CAN-SPAM by Defendant as provided by 15 U.S.C. § 7706(g)(1)(A), since it will continue to suffer immediate and irreparable harm if Defendant's conduct is not enjoined. Tumblr has no adequate remedy at law.

56. Tumblr is entitled to the greater of its actual monetary loss or statutory damages as provided by 15 U.S.C. § 7706(g)(1)(B), in an amount to be proven at trial.

57. Tumblr is entitled to an award of aggravated damages in an amount equal to three times the amount otherwise available pursuant to 15 U.S.C. § 7706(g)(3)(C) because Defendant violated CAN-SPAM willfully and knowingly and because Defendant's unlawful activity included one or more of the aggravated violations set forth in 15 U.S.C. § 7704(b).

58. Tumblr is entitled to reasonable costs, including reasonable attorneys' fees as provided by 15 U.S.C. § 7706(g)(4).

**FOURTH CLAIM FOR RELIEF FOR BREACH OF CONTRACT
UNDER COMMON LAW OF THE STATE OF NEW YORK**

59. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 58 above, and incorporates them herein by reference.

60. Defendant agreed to the terms in Tumblr's API Agreement and the Tumblr Policies. As a result, Plaintiff and Defendant entered a valid, enforceable contract.

61. The aforesaid conduct of Defendant constitutes a breach of Tumblr's API Agreement and the Tumblr Policies, including but not limited to the following examples:

a) Defendant's registration of infringing domain names incorporating the TUMBLR mark violates Paragraph 3(t) of Tumblr's API Agreement, which states "[y]ou won't, under any circumstances: (i) include in or use the Tumblr Marks, or any marks that are confusingly similar to or derivative of the Tumblr Marks... as part of your trade name (registered or otherwise), logos, or other identifiers; (ii) include in or use the Tumblr Marks or any Confusing Marks as part of any names, domain names, logos, or other identifiers of Licensee Applications; or (iii) use the Tumblr Marks or Confusing Marks in a manner that creates or may create a sense of endorsement, sponsorship, or association with Tumblr, unless expressly permitted by Tumblr, in writing, to do so[.]" and the Tumblr Trademark Guidelines. *See Exhibits A and B.*

b) Defendant's advertising and offer of follow train services which utilize ranking systems and/or directories for Tumblr blogs violates Paragraph 3(g) of the Tumblr's API Agreement which prohibits developers from creating ranking systems or directories for Tumblr blogs, and Paragraph 3(q) of Tumblr's API Agreement and Tumblr's Community Guidelines which prohibit operating non-genuine social gesture schemes, including but not limited to orchestrating or engaging in follow trains. *See id.*

c) Defendant's solicitation of users' Tumblr credentials violates Paragraph 3(l) of the API Agreement and Tumblr's Community Guidelines which expressly prohibit collecting, or trying to collect a user's Tumblr Credentials, including but not limited to usernames or passwords. *See id.*

d) Defendant's circumvention of Tumblr's security measures to gain unauthorized access to Tumblr's computers violates Paragraph 3(k) of the API Agreement which states that failing to report unauthorized access to Tumblr's API or the Tumblr Firehouse is a

material breach of the API Agreement, Paragraphs 3(j), 3(n) and 3(p) of the API Agreement which prohibits Defendant from compromising Tumblr security and circumventing mechanisms implemented by Tumblr to protect Tumblr's services and the Tumblr Platform, and Paragraphs 3(a-b) of Tumblr's Terms of Services which prohibits tampering with Tumblr computers or delivery systems and breaching or circumventing any security or authentication measures. *See id.*

e) Defendant's use of the Tumblr API to manipulate users' content and display unsolicited commercial electronic mail messages violates Paragraphs 3(e), 3(o), 3(m) and 3(u) of Tumblr's API Agreement, Paragraphs 3(e-f) of Tumblr's Terms of Service and Tumblr's Community Guidelines. *See id.*

62. Defendant's breach of the API Agreement and the Tumblr Policies has directly and proximately damaged Plaintiff.

63. Plaintiff is entitled to recover from Defendant all damages authorized by law as a result of Defendant's breach.

**FIFTH CLAIM FOR RELIEF FOR
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
UNDER COMMON LAW OF THE STATE OF NEW YORK**

64. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 63 above, and incorporates them herein by reference.

65. Use of Tumblr's site and services is governed by and subject to the Tumblr Policies. The Tumblr Policies are a valid, enforceable contract between Tumblr and its users.

66. At all times relevant to this dispute, users of Tumblr's site and services have been required to agree to the Tumblr Policies in order to access Tumblr's site and services.

67. Upon information and belief, Defendant affirmatively accepted and agreed to the Tumblr Policies and knew or should have known that all Tumblr users were required to accept and agree to the Tumblr Policies in order to access Tumblr's site and services.

68. The Tumblr Policies prohibit users of Tumblr from participating in non-genuine social gesture schemes, including but not limited to soliciting non-genuine followers, posting deceptive or fraudulent links, including but not limited to links with misleading descriptions, and posting spam, including but not limited to using deceptive means to generate revenue or traffic.

69. Defendant intentionally induces Tumblr users to breach the Tumblr Policies by offering services to automatically and immediately solicit non-genuine followers and induces Tumblr users to post a referral link on the user's blog, encourage other Tumblr users to utilize Defendant's services, and view and follow blogs that are part of Defendant's network.

70. When Tumblr users utilize Defendant's services they breach the Tumblr Policies.

71. Defendant intentionally interferes with the valid, enforceable contract between Tumblr and its users.

72. The breaches induced by Defendant directly and proximately harm Tumblr. Tumblr has suffered and continues to suffer significant harm to its reputation and goodwill.

73. Tumblr is entitled to injunctive relief, compensatory damages and punitive damages in an amount to be determined at trial.

**SIXTH CLAIM FOR RELIEF FOR
UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER NEW YORK LAW
(N.Y. GEN. BUS. LAW § 349)**

74. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 73 above, and incorporates them herein by reference.

75. By reason of the acts set forth above, Defendant has been and is engaged in deceptive acts or practices in the conduct of a business, trade or commerce in violation of New York's General Business Law § 349, and upon information and belief the unfair and deceptive trade practices statutes of several states.

76. The public is likely to be damaged as a result of Defendant's deceptive trade practices or acts.

77. The aforesaid conduct of Defendant is causing irreparable injury to Plaintiff and its goodwill and reputation, and will continue both to damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

**SEVENTH CLAIM FOR RELIEF FOR
UNFAIR COMPETITION UNDER COMMON LAW OF THE STATE OF NEW YORK**

78. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 77 above, and incorporates them herein by reference.

79. Defendant's unauthorized use of the TUMBLR mark in the <tumblrfollowers.com>, <tumblrpromos.com>, <getmoretumblrfollowers.com> and <getmoretumblrfollowers.info> domain names constitutes a false designation of origin and a false description or representation that Defendant is affiliated, connected, or associated with Tumblr and that Defendant's goods, services, and commercial activities originate from, are sponsored by, or are approved by Tumblr, and is thereby likely to confuse consumers.

80. Defendant was aware of Tumblr's exclusive rights in the TUMBLR mark at the time Defendant began using the TUMBLR mark. Defendant's use of the TUMBLR mark is willful, in bad faith, and with full knowledge of Plaintiff's prior use of, exclusive rights in and ownership of the TUMBLR mark, with full knowledge of the reputation and goodwill associated with Tumblr and the TUMBLR mark, and with full knowledge that Defendant had no right, license or authority to use the TUMBLR mark.

81. By misappropriating and trading upon the goodwill and business reputation represented by the TUMBLR mark, Defendant has been and, unless enjoined by this Court, will continue to be unjustly enriched at Plaintiff's expense.

82. Defendant's conduct constitutes common law unfair competition under the laws of the State of New York.

83. The aforesaid conduct of Defendant is causing irreparable injury to Plaintiff and its goodwill and reputation, and will continue both to damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF FOR
UNJUST ENRICHMENT UNDER COMMON LAW OF THE STATE OF NEW YORK**

84. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 83 above, and incorporates them herein by reference.

85. By virtue of the conduct described herein, Defendant has profited from its unauthorized use of the TUMBLR mark. Defendant's profits were obtained in violation of federal and state law, and came at the expense of Plaintiff.

86. As a result of Defendant's activities, Plaintiff has sustained injury, damage and loss.

87. By misappropriating and trading upon the goodwill and business reputation represented by the TUMBLR mark, Defendant has been and, unless enjoined by this Court, will continue to be unjustly enriched at Plaintiff's expense.

88. Defendant's conduct constitutes common law unjust enrichment under the law of the State of New York.

89. The aforesaid conduct of Defendant is causing irreparable injury to Plaintiff and its goodwill and reputation, and will continue both to damage Plaintiff and deceive the public unless enjoined by this Court. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment as follows:

1. A permanent injunction enjoining and restraining Defendant, and all persons or entities acting in concert with him during the pendency of this action and thereafter perpetually from:

a) using any trademark, service mark, or trade name including the TUMBLR mark;

b) using, registering, owning, leasing, selling or trafficking in any business name or domain name that incorporates in whole or part or is otherwise confusingly similar to the TUMBLR mark;

c) expressly or impliedly representing himself, his businesses, or his goods or services as affiliated, connected, or associated with, or authorized, sponsored, or approved by, Tumblr;

d) passing off to the public that his businesses or goods or services are those of or authorized by Tumblr;

e) engaging in any other conduct that will cause, or is likely to cause, confusion, mistake, deception or misunderstanding as to the affiliation, connection, or association or origin, sponsorship, or approval of his businesses, goods, or services with or by Tumblr, including but not limited to registering and/or using social media accounts that are likely to confuse consumers as to Tumblr's association with Defendant or Tumblr's authorization, sponsorship, or approval of Defendant;

f) otherwise infringing upon the TUMBLR mark or unfairly competing with Tumblr in any manner;

- g) accessing or attempting to access Tumblr's website and computer and servers;
- h) initiating unsolicited commercial message to Tumblr users;
- i) displaying Tumblr's TUMBLR trademark anywhere on Defendant's websites;
- j) engaging in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of Tumblr's website; and
- k) engaging in any activity that violates the API Agreement and the Tumblr Policies;

2. Directing that Defendant transfer to Tumblr the <tumblrfollowers.com>, <tumblrpromos.com>, <getmoretumblrfollowers.com>, and <getmoretumblrfollowers.info> domain names and any other domain names that incorporate the TUMBLR mark that are owned by or registered to any Defendant or any and all persons and entities acting in concert or participation with Defendant;

3. An award to Tumblr of damages, including but not limited to, compensatory, statutory, and aggravated damages, as permitted by law and in such amounts to be proven at trial;

4. An award to Tumblr of Tumblr's reasonable costs, including reasonable attorneys' fees;

5. With respect to the fifth, sixth, seventh and eighth claims for relief, awarding Plaintiff exemplary and punitive damages arising out of Defendant's acts of willful deceptive trade practices;

6. Awarding Tumblr interest, including pre-judgment interest, on the foregoing sums;


7. Directing that Defendant file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the above; and

8. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

DATED: May 13, 2015

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By:  _____

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